

Award No. 6188

Docket No. TD-6227

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

**THE NEW YORK CENTRAL RAILROAD
THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS
RAILROAD (N.Y.C. R.R. Co. Lessee) AND
THE PEORIA & EASTERN RAILWAY
(Operated by N.Y.C. Railroad)**

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association for and in behalf of certain train dispatchers, employees of the New York Central Railroad, The Cleveland, Cincinnati, Chicago & St. Louis Railroad (N.Y.C. R.R.Co. Lessee) and the Peoria & Eastern Railway (operated by N.Y.C. Railroad), hereinafter referred to as "these Carriers," that,

1. These Carriers failed to comply with the intent of agreed upon Article 5-(c) of the currently effective Agreements governing Hours of Service, Compensation and Working Conditions, when, and without giving the advance notice required by the provisions of said Article 5-(c), these Carriers affected a reduction in the number of regular positions in various offices and deprived the train dispatchers adversely affected thereby of opportunity to continue performing compensated service, and
2. These Carriers shall now be required to compensate claimant train dispatchers (the total number being 85, more or less) in such amounts as each of them would have earned if the requirements of said Article 5-(c) had been complied with.

EMPLOYES' STATEMENT OF FACTS: Agreements are in existence between these Carriers and their train dispatchers as represented by the American Train Dispatchers Association, parties to this dispute, bearing the effective date of April 1, 1944, as subsequently amended. Copies of said Agreements are on file with your Honorable Board, and by this reference are made a part of this submission the same as though fully set out herein.

The following rules of those Agreements are material to this dispute:

ARTICLE 1

(a) Scope

The term "train dispatcher" as hereinafter used shall be understood to include assistant chief, trick, relief, and extra dispatchers.

The work stoppage responsible for these claims was complete. The railroad was out of business; ceasing to perform the function of a common carrier. These claimants, if they had been kept at their posts would have had absolutely no work to perform, and would have been paid for doing nothing. The parties cannot reasonably be charged with having written their agreement to govern such an unusual and calamitous state of affairs and it should not now be so extended.

(Exhibits not reproduced).

OPINION OF BOARD: The claim here made by the American Train Dispatchers Association is for and on behalf of those train dispatchers whose employment on these Carriers was interrupted as of midnight, March 9, 1952, when the positions they then occupied were abolished effective as of that time. It asks that these Carriers be required to pay the Claimants the amount they would have earned if Article 5(c) of the effective Agreement had been fully complied with in doing so.

At 8:00 A. M. on Sunday, March 9, 1952, without advance notice to these Carriers, a general strike was called by the operating employes thereof, consisting of the Brotherhood of Locomotive Engineers, Brotherhood of Firemen and Enginemen and the Order of Railway Conductors. The officials of the Carriers had learned of their intention to do so only a few hours before the strike actually commenced. The strike had the immediate effect of substantially stopping operations on the affected lines. Carriers immediately moved to terminate the services of all employes whose work was thereby eliminated. Because of the strike there is no question as to Carriers' right to abolish positions if the work thereof no longer existed. Their bulletins relating to train dispatchers had the effect of abolishing 113 of 136 such positions, thus leaving 23 positions still in force and effect on and after midnight of March 9, 1952. The question is, were they required to meet the conditions of Article 5(c) of the parties' effective Agreements in doing so? This article, which is the same in all the Agreements, provides:

"As much notice as possible but not less than eighty-eight hours will be given of:

1. Reduction in regular positions, or
2. Consolidation of dispatching districts at same location. Such notice will be posted in the usual manner within the time limit specified above with a copy to the vice general chairman and office chairman.

Before such change is made effective, conference, upon request duly made, shall be held to consider the adequacy of the force."

It will be noted that there are no qualifications of, nor exceptions to, the requirement contained therein that in the reduction of regular positions the notice thereof must be given not less than eighty-eight hours before the reduction can become effective. That was not done in this instance. Nor do we think any exceptions or qualifications thereto are inherent in the rule without their either being contained therein or in some other provision of the Agreements expressly referring thereto.

In the absence of such provisions Carriers were required to meet this requirement in making the reduction in their forces of train dispatchers. In view thereof we find the claim well taken. Since the employes returned to work on Wednesday, March 12, 1952, no individual Claimant should receive more than what he would have earned had he continued to work his regular assignment during the period from midnight of March 9, 1952 until operations were again resumed on March 12, 1952, all of which would be within the period of eighty-eight hours.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carriers violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of April, 1953.